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Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Fourth meeting
Geneva, 26–28 May 2015
Item 5 (a) of the provisional agenda
Exchange of good practices: good practice recommendations on the application of the Convention to nuclear energy-related activities

Good practice recommendations on the application of the Convention to nuclear energy-related activities

Terms of reference drafted by the secretariat, in consultation with the Bureau

Summary

The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context decided at its sixth session (Geneva, 2–5 June 2014) that good practice recommendations to support the application of the Convention to nuclear energy-related activities should be developed by a designated editorial group with the assistance of a consultant. The editorial group was requested to finalize the draft recommendations for consideration by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment before their submission to the Meeting of the Parties to the Convention at its seventh session (ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1, decision VI/7).

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Among others, the recommendations are to build on document ECE/MP.EIA/2011/5 on the application of the Convention to nuclear energy-related activities. Also relevant in this context is Part A of the Declaration adopted in June 2014 on the application of the Convention and its Protocol on Strategic Environmental Assessment to nuclear energy issues, as well as the workplan for the Convention and the Protocol (ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3, declaration and decision VI/3–II/3).

The terms of reference contained in the present document were prepared by the secretariat and were discussed by the Bureau at its meeting on 5 and 6 February 2015. The Working Group is expected to consider the terms of reference, proposed timeline and sources of funding for the good practice recommendations and to finalize them.

I. Introduction

1. In June 2011, a panel discussion providing insights into how the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was applied to nuclear energy-related projects was held in the framework of the fifth session of the Meeting of the Parties to the Convention and the first session of the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment. The Meetings of the Parties to the Convention and the Protocol thereafter decided to organize a one-day workshop on the long-range impacts of nuclear energy-related activities, led by Austria, Finland and Sweden (see ECE MP.EIA/SEA/2, decision V/9–I/9).

2. The one-day workshop took place at the third session of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Working Group on EIA and SEA) (Geneva, 11–15 November 2013).

3. In June 2014, at its sixth session, the Meeting of the Parties adopted decision VI/7 on the application of the Convention to nuclear energy-related activities (see ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1). In addition, the two Meetings of the Parties adopted a declaration (see ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3), Part A of which concerns the application of the Convention and the Protocol to nuclear energy issues.[1] Moreover, the Meeting of the Parties adopted its workplan through decision VI/3–II/3 (ibid.) for the period up to the seventh session of the Meeting of the Parties, including the development of good practice recommendations on the application of the Convention to nuclear energy-related activities. The activity is to be undertaken by an external consultant(s), in line with agreed terms of reference, under the supervision of an editorial group including Austria, Belarus, Finland, France, Germany, the Netherlands, Poland, Ukraine, the European Commission and the European ECO Forum, and with support from the Convention secretariat. The recommendations are expected to be developed during 2015–2016 and to be adopted by the Meeting of the Parties to the Convention at its seventh session in 2017.

4. Consequently, the secretariat prepared a first draft of the terms of reference to facilitate discussions by the Bureau at its meeting on 5 and 6 February 2015 in relation to the scope of the recommendations, the timeline for their preparation and funding. The Bureau considered the document and revised it. The terms of reference for the the good practice recommendations on the application of the Convention to nuclear energy-related activities in the present document reflects those changes. The Working Group is expected to consider and finalize the terms of reference.

II. The scope of the recommendations

5. The objective of the good practice recommendations is to describe existing good practice on environmental impact assessment (EIA) to nuclear energy-related activities using a step-by-step approach, as well as other associated procedures (such as strategic

[1] The delegation of Armenia expressed its reservation regarding paragraph 6 of the Declaration, in Part A on the application of the Convention and the Protocol to nuclear energy issues (ECE/MP.EIA/20–ECE/MP.EIA/SEA/4, para. 56).

environmental assessment (SEA) and the procedures under the International Atomic Energy Agency (IAEA)). Ultimately the aim is to facilitate the exchange of information and thus assist countries in the consistent practical application of the Convention to nuclear energy-related activities.

6. The recommendations should address in separate chapters the issues of (a) screening, (b) notification, (c) the EIA documentation, (d) public participation, (e) consultations, (f) examination of the information gathered and the final decision, and (g) post-project analysis. With regard to these chapters, the information and issues set out below should be considered.

A. Screening

7. Screening will have to determine whether nuclear activities, as well as major changes to them,[2] fall under the scope of the Convention. That is, is the proposed activity listed under appendix I, as amended, and likely to cause a significant transboundary impact?[3] In addition, if the proposed activity is not listed in appendix I but both the Party of origin and the potential Affected Party(ies) agree that it is likely to cause a significant transboundary impact, the activity will also fall under the Convention.[4] Screening includes considerations about the extension, renewal or update of a licence (e.g., lifetime extension), such as a substantial increase in the production levels or in the production/transport/storage of radioactive waste for a facility (not only a nuclear power plant) and decommissioning, or "mini-reactors" (which may cumulatively build up). It needs to be considered whether activities falling under the full life cycle (starting from the choice of materials and including decommissioning) should be considered, as well as both the front- and back-ends (i.e., mining and waste disposal).

8. In order to ensure a high level of protection of the environment, precautionary actions need to be taken for nuclear activities which, because of their vulnerability to major accidents, and/or natural disasters (such as flooding, sea level rise, or earthquakes) are likely to have significant adverse effects on the environment. For these projects, it is important to consider their vulnerability (exposure and resilience) to major accidents and/or disasters, the risk of those accidents and/or disasters occurring and the implications for the likelihood of significant adverse effects on the environment. The risk of major/severe accidents and/or disasters is not explicitly mentioned in appendix III to the Convention.[5]

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[2] Convention, article 1, subparagraph (v).

[3] For general guidance on determining what constitutes significant transboundary impact, see appendix III to the Convention.

[4] Convention, article 2, paragraph 5.

[5] The risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge, is part of the screening criteria under annex III, point 1 (f), of European Union (EU) Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU (EIA Directive), or under the relevant assessments carried out pursuant to national legislation where the requirements of the Directive are met. Moreover, in order to avoid duplications in the EU context, it should be possible to use any relevant information available and obtained through risk assessments carried out pursuant to EU legislation, such as Directive 2012/18/EU of the European Parliament and the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC and Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for

However, the Convention has a wide scope and its interpretation, in line with its objective and the precautionary principle, ensures a good application, without compromising its goals.[6]

B. Notification

9. Notification requires the determination of the potentially affected Parties to be notified under the Convention. What kind of criteria should apply to identify and set the scope of the potentially affected parties? Should the Party of origin notify only Parties that are potentially affected during the normal operation of a planned installation or also those Parties potentially affected by an accident beyond the design base?

10. The recommendations should compare the mechanisms provided under the Convention for the exchange of sufficient information at the request of a Party that considers that it would be affected but has not been notified, as well as the inquiry procedure (art. 3, para. 7, of the Convention, and appendix IV), with the right of a potentially affected Party to be notified upon request (under relevant EU legislation).[7]

11. The recommendations should further address the timing of the notification, so as to ensure early notification (art.3, para. 1), and the timing of request for information (art. 3, para. 7), when no notification has taken place.

12. Given the complexity of decision-making processes and the diversity of national procedures, there is a need for the notification to provide — in addition to the information required by article 3, paragraph 2 of the Convention — general information about the EIA system in the Party of origin, the permitting system and the decision-making procedure in general.

13. Furthermore, how can the Party of origin ensure that opportunities for public participation provided to the public of the potentially affected Party/ies are equivalent to those provided to the public of the Party of origin (art. 6)?

C. Environmental impact assessment documentation[8]

14. The chapter on the EIA documentation should take into account the diversity of national decision-making and permitting procedures, as well as the necessity for clarity in the EIA documentation to ensure a holistic assessment of likely significant transboundary impacts, while respecting relevant environmental legislation and international nuclear safety standards. In addition, the chapter should consider or take into account:

(a) How detailed and precise the EIA documentation should be in order to allow for meaningful consultations under article 5 of the Convention;

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the nuclear safety of nuclear installations.

[6] See also Convention, article 1, subparagraph (vii).

[7] Article 7 of the EIA Directive.

[8] Under this chapter the recommendations should take into account the diversity of the national decision-making and permitting procedures, as well as the necessity of clear EIA documentation to ensure a holistic assessment of likely significant transboundary impact respecting relevant environmental legislation and international nuclear safety standards.

(b) The description of the potential significant impacts of major accidents and/or disasters relevant to the project, on the basis of appendix II, item (d), of the Convention, should go beyond design-based accidents;

(c) A description of the potential impacts of external events (e.g., a sudden shortage of cooling water supply, terrorist attacks or natural phenomena resulting from climate change) should be included in the EIA documentation, further to appendix II, item (d);

(d) A description of measures to address major accidents and/or disasters relevant to the project (as described above), on the basis of appendix II, item (e), of the Convention, should be included;

(e) The issue of the possible cumulative impacts of multiple installations, and the need to include their associated cumulative risk in the EIA documentation;

(f) The relationship between environment and safety and how both environment and safety concerns can be considered in a comprehensive and consistent manner;

(g) How concerns regarding proper dissemination to the relevant population or translation of highly technical and very large EIA documentation can be addressed.

15. One complication is the timing of the EIA procedure, as sometimes it takes place quite late in the decision-making procedure and at other times very early, such as at a stage when the reactor type has not been determined yet. This timing has a direct effect on the EIA documentation, as different information may be available depending on when the EIA is undertaken in relation to the decision-making. With this in mind, what should be the necessary contents of the EIA documentation regarding the information required in appendix II — i.e., how detailed should the required information be to ensure a sound basis for the environmental assessment?

D. Public participation

16. The chapter on public participation should highlight the need for improved cooperation among Parties to ensure proper public participation procedures in accordance with the Espoo Convention (art. 3, para. 8; art. 2, paras. 2 and 6, and art. 4, para. 2).

17. Reasonable time frames for public participation and the need for several rounds of public participation in case of multi-stage EIA procedures should be considered in this chapter.

18. There will also need to be recommendations on how to identify the public in the areas likely to be affected (art. 2, para. 6).

E. Consultations

19. The chapter on consultations should treat the issue of weighing national security and confidentiality issues against transparency, the right to know and the opportunity for the potentially affected Party/-ies to be prepared and be able to protect the public and the environment.

20. Consultations, in particular as far as public participation procedures are concerned, raise the issue of translation: into which languages should the documentation be translated prior to consultations? Which documents should be translated? How can the quality of the

translation be ensured? Who should bear the costs of translation? Also, where the documentation is long and complex, what is the potential effect of undertaking translations on the time span available for public participation procedures in the Affected Party?

21. The issue of how to make information widely available and ensure accessibility of all documentation during the consultation phase must be considered, as well as the use of an appropriate means of consultation (e.g. open discussions and public hearings). Another question is how to ensure that the competent authorities and developer are present at the hearings.

F. Examination of the information gathered and final decision[9]

22. In a chapter that will look at the Convention's provisions on the examination of the information gathered and the final decision, the following issues should be addressed:

(a) Clarity and transparency regarding the final decision; in other words, which decision under national legislation is the final decision under article 6 of the Convention, the operating licence or a different licence?;

(b) How does the final decision take into consideration the comments received from the public (both from the Party of origin and affected Parties) and the authorities (national and those of the potentially affected Parties)?;

(c) How can a very negative input from the public and the authorities related to significant adverse transboundary impacts influence the final decision-making?;

(d) When should the final decision become public?;

(e) Is there a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to public participation provisions under the Espoo Convention?;

(f) What is the role of the IAEA Site and External Events Design (SEED) Review Service in ensuring that the best available option is selected for nuclear energy development?

G. Post-project analysis

23. The recommendations need to look at how to determine when to undertake the post project analysis. Given the very long time lag between the final decision and the project decommissioning, they should also address how post-project analysis and Parties' cooperation in that respect can best address concerns over impacts and risks, as well as industrial accident concerns and emergency action plans.

24. Post-project analysis should also look at whether there are any procedures to monitor the environment and then update the EIA documentation, and what would be the consequences of taking into account the provisions of the Convention. Another question to raise in this context is the validity of the EIA procedure, given that in many jurisdictions the duration of the operation of a nuclear facility may be very long and controls may only be

[9] Convention, art. 6, para. 1.

limited to safety concerns — not environmental concerns or the views of subsequent generations.

III. Sources

25. The recommendations should, inter alia, build upon and take into account the following documents:[10]

(a) Background note on the application of the Convention to nuclear energy-related activities (ECE/MP.EIA/2011/5): note prepared by the secretariat — at the request of the Working Group on Environmental Impact Assessment — for the Meeting of the Parties at its fifth session;

(b) Report of the Meeting of the Parties on its fifth session (ECE/MP.EIA/15, paras. 44–47), as well as presentations by panellists, available on the Convention website;[11]

(c) Report of the Task Force on Public Participation in Decision-making (under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) on its fourth meeting (ECE/MP.PP/WG.1/2013/6, paras. 22–73);

(d) Report of the third meeting of the Working Group on EIA and SEA, (ECE/MP.EIA/WG.2/2013/7, paras. 24–26, and annex II (co-Chairs' summary of the workshop on the nuclear energy-related activities));

(e) Decision VI/7 of the Meeting of the Parties on the application of the Convention to nuclear energy-related activities;

(f) Decision VI/3–II/3 on the adoption of the workplan;

(g) Declaration (Part A) on the Application of the Convention and the Protocol to nuclear energy issues;

(h) Opinions of the Espoo Implementation Committee (2001–2014);

(i) *Guidance on the Practical Application of the Espoo Convention* (ECE/MP.EIA/8);

(j) Specific methodologies and criteria to determine the significance of adverse transboundary impact (CEP/WG.3/R.6), note by the secretariat to the fourth Meeting of the Signatories to the Espoo Convention (Geneva, 14–17 March 1995);

(k) The Environmental Impacts Checklist, developed to be used as a tool to aid in the completion of the EIA;[12]

(l) *Current Policies, Strategies and Aspects of Environmental Impact Assessment in a Transboundary Context*, Part III, "Specific methodological issues of environmental impact assessment in a transboundary context";[13]

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[10] Most documents are available on the Convention's web site, unless otherwise provided.

[11] Available from http://www.unece.org/env/eia/meetings/mop_5.html#/ (under "Proposals, presentations, statements" tab).

[12] Available from http://www.unece.org/env/eia/resources/checklists.html.

[13] United Nations Sales publication, No. E.96.II.E.11.

(m) *Simplified Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment* (ECE/MP.EIA/18);[14]

(n) *Guidance on the Application of the Environmental Impact Assessment Procedure for Large-scale Transboundary Projects*.[15]

IV. Consultants and the editorial group

26. The secretariat will explore possible candidates for carrying out the work (to be determined).

27. An editorial group, composed of representatives of Austria, Belarus, Finland, France, Germany, the Netherlands, the European Commission and the European ECO Forum, was established by decision VI/7 to oversee the development of the draft recommendations, in accordance also with the current workplan for the Convention and the Protocol (decision VI/3–II/3). The editorial group should work electronically and finalize the draft for consideration by the Working Group on EIA and SEA before their submission for adoption by the Meeting of the Parties at its seventh session.

28. The work should take into account input by Parties, non-Parties and other stakeholders' contributions.

V. Timeline

29. The timeline set out in the table below is suggested for the completion of the activity.

Method of work	*Responsible body*	*Timing*
Preparation of a document on the terms of reference	Secretariat	December 2014-January 2015
Dissemination of terms of reference as an informal document to the Bureau by e-mail	Secretariat	End of January 2015
Discussion of the terms of reference, including potential candidates and funding	Bureau	5–6 February 2015
Revisions to the terms of reference based on discussions by the Bureau (electronically)	Secretariat /Bureau	By 27 February 2015
Submission of the terms of reference as an official pre-session document to the fourth meeting of the Working Group on EIA and SEA	Secretariat	17 March 2015

[14] The Simplified Manual and other publications that may be useful are available from http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/enveiapublications.html.

[15] European Commission (Luxembourg, Publications Office of the European Union, 2013). Available from http://ec.europa.eu/environment/eia/home.htm.

Method of work	*Responsible body*	*Timing*
Consideration of the terms of reference by the Working Group on EIA and SEA	Working Group on EIA and SEA	26–28 May 2015
Preparation of contract(s) for the selected consultant(s)	Secretariat	June/July 2015
E-mail informing and inviting Parties and non-Parties and other stakeholders to contribute to the work under the activity (including by providing examples or practical experience)	Secretariat	June/July 2015
Responses by Parties and other stakeholders/collection of examples	Secretariat/consultant(s)	Mid-September 2015
First draft of the recommendations	Consultant(s)	December 2015
Electronic discussion of the recommendations	Editorial group with the support of the secretariat	January-February 2016
Submission of the draft recommendations as an official pre-session document to the fifth meeting of the Working Group on EIA and SEA and dissemination of information (e-mail)	Secretariat	February/March 2016
Discussion of the first draft recommendations by the Working Group on EIA and SEA	Working Group on EIA and SEA	April-May 2016
Revisions of the draft recommendations further to comments received before, during and after the Working Group's fifth meeting	Consultants/editorial group with the support of the secretariat	June-September 2016
Submission of the draft recommendations as an official pre-session document to the sixth meeting of the Working Group on EIA and SEA and preparation of the draft decision for their adoption — dissemination of information (e-mail)	Secretariat	September 2016
Discussion of the second draft recommendations and the draft decision by the Working Group on EIA and SEA at its sixth meeting	Working Group on EIA and SEA	October-November 2016
Revisions of the second draft of the recommendations further to comments received before, during and after the Working Group's sixth meeting	Consultants/editorial group with the support of the secretariat	November 2016-February 2017
Submission of the draft recommendations as an official pre-session document for the seventh session of the Meeting of the Parties	Secretariat	March 2017
Adoption of the recommendations	Meeting of the Parties	June 2017

VI. Funding

30. According to decision VI/3-II/3 on the adoption of the workplan and decision VI/4 II/4 on the budget, financial arrangements and financial assistance (see ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3), the development of the good practice recommendations are expected to require US$ 10,000 to US$ 20,000. Austria has pledged US$ 5,000 to this activity, while the European Union has offered to contribute US$ 10,000 through its Greening Economies in the Eastern Neighbourhood (EaP GREEN) programme, subject to approval by the EaP Green Steering Committee. However, the activity at issue seems not to fall within the scope of the EaP Green Programme and alternative sources of funding should be sought.